

AMERICAN ARBITRATION ASSOCIATION
Arbitration No. 01-22-0003-5568-1-MS

In the Matter of the Arbitration of a
Certain Controversy Between
GENESIS ASIA PACIFIC PTE. LTD.,

Claimant,

- against -

THREE ARROWS CAPITAL LTD,

Respondent.

**WITNESS STATEMENT OF ARIANNA
PRETTO-SAKMANN**

1. I, Arianna Pretto-Sakmann, am the Chief Legal Officer of Genesis Global Trading, Inc., and authorized person of Genesis Global Capital, LLC, and am a director of Genesis Asia Pacific PTE. LTD. (“Genesis”), the Claimant in this arbitration.

2. I make this witness statement in support of Genesis’s motion for emergency relief under Rule 38 of the AAA Commercial Arbitration Rules and Procedures.

3. I have reviewed Genesis’s Statement of Claim dated June 15, 2022 (the “Statement of Claim”), the exhibits annexed thereto, and Genesis’s Rule 38 letter requesting emergency relief (the “Rule 38 Letter”). I affirm and verify that the allegations in the Statement of Claim and the Rule 38 Letter are true and correct, to the best of my knowledge, except as supplemented or clarified here. I also affirm and verify that the exhibits attached to the Statement of Claim are true and correct copies of what they purport to be. For the avoidance of doubt, I am re-attaching those exhibits here, as well as the Statement of Claim and the Rule 38 Letter.

- A true and correct copy of the 2019 MLA¹ is attached hereto as **Exhibit C-1**;

¹ Any terms not defined here shall have the meaning ascribed to them in the Statement of Claim.

- A true and correct copy of the 2020 MLA is attached hereto as **Exhibit C-2**;
- A true and correct copy of the Assignment Agreement is attached hereto as **Exhibit C-3**;
- A true and correct copy of the 2020 Pledge Agreement is attached hereto as **Exhibit C-4**;
- A true and correct copy of the June 4, 2020 Pledge Supplement is attached hereto as **Exhibit C-5**;
- A true and correct copy of the June 16, 2022 Pledge Supplement is attached hereto as **Exhibit C-6**;
- A true and correct copy of the 2021 Pledge Agreement is attached hereto as **Exhibit C-7**;
- A true and correct copy of the 2021 Account Control Agreement is attached hereto as **Exhibit C-8**;
- A true and correct copy of the 2022 Pledge Agreement is attached hereto as **Exhibit C-9**;
- A true and correct copy of the 2022 Amendment is attached hereto as **Exhibit C-10**;
- True and correct copies of the emails between Genesis and Three Arrows between June 12 and June 13, 2022 containing the First Notification and Second Notification are attached hereto as **Exhibits C-11 and C-12**;
- A true and correct copy of the Notice of Default is attached hereto as **Exhibit C-13**;
- A true and correct copy of the Statement of Claim, without exhibits, is attached hereto as **Exhibit C-14**; and
- A true and correct copy of the Rule 38 Letter, without exhibit, is attached hereto as **Exhibit C-15**.

4. I was present at the hearing on June 21, 2022 (the “June 21 Hearing”) on Genesis’s Rule 38 request for emergency relief. Counsel for Respondent Three Arrows Capital LTD (“Three Arrows”) made numerous misstatements, which I would like to clarify and rebut in this Witness Statement.

Genesis and Three Arrows Entered into Term Sheets for the Outstanding Loans

5. The Statement of Claim describes how pursuant to the terms of the MLAs, Genesis and Three Arrows would enter into term sheets for each loan. At the June 21 Hearing, counsel for Three Arrows claimed that Genesis has not proven the amount of loans currently outstanding.

6. Three Arrows' counsel's claims are wrong.

7. Genesis keeps records of its loans to counterparties. Attached hereto as **Exhibits C-16-C-32** are true and correct copies of the term sheets reflecting the loans to Three Arrows. Because there are so many open loans, I have copied the most pertinent information to the below chart.

8. The chart contains, in order of column from left to right, the date of the relevant loan, the amount of the loan in cryptocurrency or fiat currency, the market value as of June 22, 2022 of the loaned assets, the initial margin requirement (i.e., the amount of collateral, expressed in a percentage of the value of the loan amount, to be posted at the advent of each loan), the margin refill percentage (i.e., when the value of the collateral decreases below this percentage of the loan, Genesis can issue a margin call for Three Arrows to top up the collateral to the margin requirement amount), the market value of the margin refill amount (i.e., the margin refill percentage multiplied by the June 22 value of the loaned assets), and the market value of the level of collateral to be maintained (i.e., the margin requirement percentage multiplied by the June 22 value of the loaned assets).

| Loan Date | Assets Lent to Three Arrows | 6/22/22 Market Value of Loaned Assets | Margin Required | Margin Refill | Market Value of Margin Refill | Market Value of Level of Collateral to be Maintained | Exhibit |
|------------------|------------------------------------|--|------------------------|----------------------|--------------------------------------|---|-------------------|
| 8/10/21 | 290,000 FTT ² | \$7,874,318 | 100% | 90% | \$7,086,886 | \$7,874,318 | C-16 |
| 9/30/21 | 61,500 ETC | \$979,695 | 100% | 90% | \$881,726 | \$979,695 | C-17 ³ |
| 10/25/21 | 100,000 ETC | \$1,593,000 | 100% | 90% | \$1,433,700 | \$1,593,000 | C-18 |
| 12/6/21 | \$678,430,911.74 | \$678,430,912 | 100% | 90% | \$610,587,821 | \$678,430,912 | C-19 |
| 12/9/21 | 50,000 ETC | \$796,500 | 100% | 90% | \$716,850 | \$796,500 | C-20 |
| 2/9/22 | \$120,000,000 | \$120,000,000 | 150% | 140% | \$168,000,000 | \$180,000,000 | C-21 |
| 2/17/22 | \$200,000,000 | \$200,000,000 | 100% | 90% | \$180,000,000 | \$200,000,000 | C-22 ⁴ |

² This loan was originally for 2,000,000 FTT (reflected in C-16), but a portion of the original loan was returned.

³ The term sheet incorrectly states that 66,500 ETC was loaned to Three Arrows. In actuality, 50,000 ETC was loaned to Three Arrows on September 30, 2021, and Three Arrows previously borrowed 11,500 ETC, for a total of 61,500 ETC. In any event, the amount of ETC units claimed by Genesis with respect to this loan is less than the amount set forth on the term sheet, so Three Arrows is not prejudiced by any such mistake.

⁴ Genesis mistakenly never countersigned this term sheet (which was indeed signed by Three Arrows), and such DocuSign mistakenly placed a “VOID” notation on it even though this amount was indeed loaned to Three Arrows, and the term sheet is not void.

| Loan Date | Assets Lent to Three Arrows | 6/22/22 Market Value of Loaned Assets | Margin Required | Margin Refill | Market Value of Margin Refill | Market Value of Level of Collateral to be Maintained | Exhibit |
|------------------|------------------------------------|--|------------------------|----------------------|--------------------------------------|---|----------------|
| 3/16/22 | 119,600 ETC ⁵ | \$1,905,228 | 100% | 90% | \$1,714,705 | \$1,905,228 | C-23 |
| 3/31/22 | 400,000 FTT ⁶ | \$10,861,128 | 100% | 90% | \$9,775,015 | \$10,861,128 | C-24 |
| 5/6/22 | 158,804,954.17 USDC ⁷ | \$158,804,954 | 150% | 140% | \$222,326,936 | \$238,207,431 | C-25 |
| 5/15/22 | \$88,789,800 | \$88,789,800 | 100% | 90% | \$79,910,820 | \$88,789,800 | C-26 |
| 5/16/22 | \$150,000,000 | \$150,000,000 | 100% | 90% | \$135,000,000 | \$150,000,000 | C-27 |
| 5/16/22 | 60,000,000 USDC | \$60,000,000 | 100% | 90% | \$54,000,000 | \$60,000,000 | C-28 |
| 5/16/22 | 50,000,000 USDT | \$49,950,000 | 0% | 0% | \$0 | \$0 | C-29 |
| 5/16/22 | \$504,994,100 | \$504,994,100 | 0% | 0% | \$0 | \$0 | C-30 |

⁵ This loan was originally for 300,000 ETC (reflected in C-23), but a portion of the original loan was returned.

⁶ This loan was originally for 2,800,000 FTT (reflected in C-24), but a portion of the original loan was returned.

⁷ This loan was originally for 225,000,000 USDC (reflected in C-25), but a portion of the original loan was returned.

| Loan Date | Assets Lent to Three Arrows | 6/22/22 Market Value of Loaned Assets | Margin Required | Margin Refill | Market Value of Margin Refill | Market Value of Level of Collateral to be Maintained | Exhibit |
|------------------|------------------------------------|--|------------------------|----------------------|--------------------------------------|---|----------------|
| 5/17/22 | \$150,892,500 ⁸ | \$150,892,500 | 100% | 90% | \$135,803,250 | \$150,892,500 | C-33 |
| 5/30/22 | \$87,863,400 ⁹ | \$87,863,400 | 115% | 105% | \$92,256,570 | \$101,042,910 | C-34 |
| 6/6/22 | \$49,119,034.50 | \$49,119,035 | 120% | 110% | \$54,030,938 | \$58,942,841 | C-31 |
| 6/7/22 | \$40,798,490.40 | \$40,798,490 | 120% | 110% | \$44,878,339 | \$48,958,188 | C-32 |
| TOTAL | | \$2,363,653,060 | | | \$1,798,403,556 | \$1,979,274,452 | |

⁸ In the short time to prepare this filing, Genesis has not been able to locate a signed term sheet for this loan. Instead, I am attaching a Telegram chat between Genesis and Three Arrows showing the agreed-upon terms of the loan, a true and correct copy of which is attached as **Exhibit 33**.

⁹ In the short time to prepare this filing, Genesis has not been able to locate a signed term sheet for this loan. Instead, I am attaching a Telegram chat between Genesis and Three Arrows showing the agreed-upon terms of the loan, a true and correct copy of which is attached as **Exhibit 34**.

Genesis Properly Issued the Margin Call to Three Arrows

9. As the Statement of Claim explains, in the event that so-called “Additional Collateral” is required to be delivered from Three Arrows to Genesis, Genesis is permitted to issue a margin call to Three Arrows.

10. The Statement of Claim describes how on June 12, 2022, Additional Collateral was required to be delivered to Genesis due to market movements. That day, Genesis sought \$189,259,615 in additional collateral in the First Notification. Due to significant volatility in the market, by the time Genesis issued the Second Notification on June 13, 2022, the amount of the margin call was \$290,443,060, and later increased to \$354,546,337.

11. At the June 21 Hearing, counsel for Three Arrows challenged the amounts of the margin call (though he did not say what the proper amount would be). I have no reason to believe that the amounts set forth in the First Notification or Second Notification are incorrect. Genesis calculated these amounts by subtracting the amount of Three Arrows’ borrowings that are unsecured from the total margin level to be maintained. As of June 23, 2022 at around 2:00 pm, for example, that amount of Additional Collateral required was \$719,812,494, reflecting \$1,257,913,546 in collateral already pledged and/or delivered to Genesis and a \$1,977,726,010 margin level to be maintained.¹⁰ As noted in the Statement of Claim, when Genesis emailed Three Arrows on June 13, the amount of Additional Collateral to be delivered was \$354,546,337; the difference from June 13 to today is due to the frequent change in the price of cryptocurrency and illustrates the volatile nature of these assets.

¹⁰ These figures set forth in this sentence differ slightly from the figures in the chart set forth in Paragraph 8 and the figures in the “The Relief Sought in This Motion” section below, because the figures in the chart were calculated as of June 22, 2022 and the figures in the “The Relief Sought in This Motion” section were calculated later in the day on June 23, 2022. The assets underlying these figures are volatile and change in value over the course of a given day.

12. Moreover, in real time, Three Arrows never disagreed that it had an obligation to deliver Additional Collateral to Genesis, or the amount of such obligation.

13. To the contrary, in response to the First Notification, on June 12, 2022, Kyle Davies, a principal of Three Arrows, responded “Acknowledged.” He did not contest the amount required to be posted. He literally and explicitly acknowledged it.

14. Three Arrows’ counsel’s statements are further belied by a chat between Three Arrows principals Kyle Davies and Zhu Su, Genesis Co-Head of Trading and Lending Matt Ballensweig, and me, a true and correct copy of which is attached hereto as **Exhibit C-35**. The chat illustrates that initially, after receiving the margin call, Three Arrows was engaged in negotiations on June 13, 2022, and even suggested pledging certain shares in Deribit and Starkware, to meet the margin call.¹¹ Neither Mr. Davies nor Mr. Su ever contested the margin call, nor that amounts are due and owing to Genesis under the loans. The chat shows that Three Arrows eventually communicated less and less frequently and did not further engage to answer Genesis’s substantive questions regarding the loan.

15. Moreover, the MLAs contain a very specific procedure whereby Three Arrows can contest a margin call, but Three Arrows failed to do so. Section 4(c) of both MLAs provide that Three Arrows has either twelve or six hours (depending on the MLA) to respond to the First Notification to either pay the Additional Collateral requested or respond that the spot rate has changed sufficiently such that no Additional Collateral is required. If Three Arrows fails to respond to the First Notification, Genesis may send the Second Notification. Three Arrows has either six or three hours (depending on the MLA) to respond to the Second Notification, and “[f]ailure by [Three Arrows] to respond to either the First Notification or the Second Notification,

¹¹ Three Arrows also suggested pledging those shares in an email to Mr. Ballensweig and me, a true and correct copy of which is attached hereto as **Exhibit C-36**.

shall give [Genesis] the option to declare an Event of Default under Section VII below” (emphasis added).

16. Three Arrows did not respond to the First Notification or the Second Notification under the terms of the MLA.

17. As such, even assuming *arguendo* that Three Arrows believed that the amount of Additional Collateral requested by Genesis was incorrect (and it was not incorrect), Three Arrows did not follow the procedure to challenge such amount. Three Arrows’ failure to respond to the First and Second Notifications by posting the amount of Additional Collateral due or to contest such Additional Collateral is a concession of their accuracy (and, itself, an Event of Default under the MLAs). Three Arrows’ outstanding loan balance thus became immediately due and owing, as set forth in the Notice of Default.

The Risk Team and I Have Authority to Act on Behalf of Genesis

18. At the June 21 Hearing, counsel for Three Arrows contended that the First Notification, the Second Notification, and Notice of Default were not properly issued because they were not sent by the proper entity. That contention is false.

19. As stated very clearly in the Notice of Default itself, I am a director of Genesis, and as such I have authority to send the Notice of Default, and to otherwise act on behalf of Genesis.

20. Additionally, the First Notification and Second Notification were sent by Genesis’s Sujal Gandhi and Adim Offurum, respectively, on behalf of the Genesis “Risk” team. The Risk team manages risk for the entire Genesis family of entities, including the Genesis entity that is the Claimant for this lawsuit. Both Mr. Offurum and Mr. Gandhi thus have the authority to send emails on behalf of Genesis.

21. In any event, for avoidance of doubt, attached hereto is a true and correct copy, attached as **Exhibit C-37**, of a resolution of the directors of Genesis, of which I am one, dated March 31, 2022, authorizing Mr. Offurum and Mr. Gandhi as authorized signatories for Genesis for the purpose of entering into lending agreements and term sheets.

Numerous News Article and Public Statements Confirm that There is a Serious Risk That Genesis Will Not Be Made Whole

22. At the June 21 Hearing, counsel for Three Arrows blithely suggested that a tweet from Three Arrows' principal Zhu Su was the only evidence that there was a risk of assets dissipation and that there was a risk that any eventual award in Genesis's favor would be rendered ineffectual.

23. A simple search of the public record belies counsel's contention. Publicly available materials, most of which were published after Genesis commenced this arbitration, show that there is a significant risk that Three Arrows is dissipating assets and/or will not have sufficient assets to make Genesis whole.

24. For example, on June 16, 2022, the *Financial Times* published an article entitled "Crypto hedge fund Three Arrows fails to meet lender margin calls" (the "FT Article"), a true and correct copy of which is attached hereto as **Exhibit C-38**.

25. The FT Article reports that "Three Arrows Capital failed to meet demands from lenders to stump up extra funds after its digital currency bets turned sour, tipping the prominent crypto hedge fund into a crisis that comes as a credit crunch grips the industry." The FT Article quotes a digital asset manager who explained that Three Arrows "went into some enormous positions" and had exposure to numerous crypto firms. Another source from a crypto trading firm told *The Financial Times* that their firm had been unable to reach Three Arrows and that Three Arrows is "not responding to anyone."

26. On June 17, 2022, the *Wall Street Journal* published an article entitled “Crypto Hedge Fund Three Arrows Capital Considers Asset Sales, Bailout” (the “WSJ Article”) a true and correct copy of which is attached hereto as **Exhibit C-39**.

27. The WSJ Article reports that Three Arrows “has hired legal and financial advisers to help work out a solution for its investors and lenders, after suffering heavy losses from a broad market selloff in digital assets.” The WSJ Article further states that Three Arrows reportedly lost \$200 million resulting from the collapse of two tokens, TerraUSD and LUNA, in May 2022; and subsequently lost additional amounts after many other tokens dropped in value. The *Wall Street Journal* reported that according to Mr. Davies, “Three Arrows is exploring options including asset sales and a rescue by another firm. . . . the fund is hoping to reach an agreement with creditors that would give it more time to work out a plan.”

28. There are numerous other articles concerning Three Arrows’ massive losses and exposure, and its failure to communicate with creditors. A representative sample is below:

- *Decrypt* reported on June 15, 2022 that Three Arrows was “selling off assets.”
- *CoinDesk* reported on June 16, 2022 that large crypto lender BlockFi liquidated Three Arrows after Three Arrows failed to meet margin calls.
- *The Block* reported on June 17, 2022 that crypto exchanges FTX, Deribit, and BitMex liquidated Three Arrows’ positions after it failed to meet margin calls. *The Block* also reported that “several people” had told the publication that they could not reach anyone at Three Arrows.
- *Nepalilm* reported on June 18, 2022 that Three Arrows “is having a hard time following liquidations” and “positions of the company have been cut, following unmet margin calls.”
- *Coinpedia* wrote on June 18, 2022 that Three Arrows was “on the verge of insolvency.” It stated that Three Arrows “borrowed funds from every significant lender” and failed to meet numerous margin calls.
- *Crypto Briefing* wrote on June 21, 2022 that Three Arrows could be facing bankruptcy.

- *Marketwatch* wrote on June 22, 2022 that Three Arrows had failed to repay a loan to crypto platform Voyager Digital worth \$315 million BTC and \$350 million in USDC.

A true and correct copy of a compendium of these articles is attached as **Exhibit C-40**.

29. Additionally, Three Arrows' principal Zhu Su tweeted on June 14, 2022 that "[w]e are in the process of communicating with relevant parties and fully committed to working this out." A true and correct copy of Mr. Su's tweet is attached hereto as **Exhibit C-41**. This tweet illustrates that Three Arrows is apparently making deals with certain lenders or creditors, but as this application shows, Three Arrows has not been willing to make a deal with Genesis, to make Genesis whole, or even to meaningfully acknowledge Genesis's concerns.

30. On June 15, 2022, the head of trading at crypto trading firm 8 Blocks Capital ("8 Blocks") tweeted a thread comprehensively explaining Three Arrows' chicanery with respect to 8 Blocks. The tweet thread explained that 8 Blocks paid a fee to use Three Arrows' trading accounts. On June 13, 8 Blocks asked for a large withdrawal but received no reply. On June 14, 8 Blocks noticed that \$1 million was missing from 8 Blocks' account with Three Arrows, yet Three Arrows refused to respond to 8 Blocks. 8 Blocks subsequently learned that Three Arrows was "leveraged long everywhere and were getting margin-called. Instead of answering the margin calls, they ghosted everyone. The platforms had no other choice but to liquidate their positions, causing the markets to further dump." A true and correct copy of the 8 Blocks tweet thread is attached hereto as **Exhibit C-42**.

The Relief Sought on This Motion

31. Due to the extreme volatility in the market, and the fact that over a week has passed since Genesis filed its Statement of Claim and Rule 38 Letter, some of the relief requested in the Rule 38 Letter has changed or requires clarification.

32. As such, I would like to clarify what Genesis is seeking in this emergency motion.

33. The outstanding amount of the Three Arrows' loans from Genesis, as of June 23, 2022, totals \$2,363,105,165.

34. As described in the Statement of Claim, pursuant to each term sheet, Three Arrows delivered collateral, typically in BTC or ETH, to Genesis. Genesis's records show that the value of such collateral totals \$694,350,289.40 as of June 23, 2022. Because Genesis already has that collateral in its possession, Genesis is not seeking the value of such collateral in this motion.

35. Three Arrows also pledged certain shares to Genesis as security for its repayment obligations. Genesis's records show that the value of those shares, as of June 23, 2022, equals \$470,457,555.52. Genesis has either taken possession of, or is in the process of taking into possession, those shares, and thus is not seeking the value of such shares in this motion.

36. There is a \$1,198,297,320 difference, as of June 23, 2022, between the outstanding loan amount (\$2,363,105,165) and the collateral and pledged shares already in Genesis's possession or constructive possession (\$694,350,289.40 and \$470,457,555.52, respectively). Genesis is thus seeking emergency relief with respect to that \$1,198,297,320.

37. As described in and exhibited to the Statement of Claim, Three Arrows pledged certain AVAX and NEAR tokens in a cryptocurrency wallet in Three Arrows' control as security for Three Arrows' repayment obligations. A true and correct copy of a UCC financing statement with respect to those AVAX and NEAR tokens is attached hereto as **Exhibit C-43**. As of June 23, 2022, the value of those AVAX and NEAR tokens equals \$93,105,701.40. Genesis respectfully requests that those tokens be placed into escrow pending the full merits hearing in this arbitration. In the alternative, Genesis respectfully requests that Three Arrows be enjoined from taking any action to withdraw, transfer, sell, encumber, dissipate, or hypothecate those AVAX and NEAR tokens.

38. If Genesis's requested relief is granted with respect to the AVAX and NEAR tokens, there is still \$1,105,191,619, as of June 23, 2022, in outstanding borrowings that are unsecured (i.e., \$1,198,297,320 - \$93,105,701.40).

39. As such, Genesis respectfully requests that Three Arrows place into escrow sufficient assets to cover the \$1,105,191,619 unsecured amount, including but not limited to the Deribit Shares and Starkware Shares that Three Arrows already informed Genesis that it has in its possession, and which it alluded to as possible further collateral in its communications with Genesis. In the alternative, Genesis respectfully requests that Three Arrows be enjoined from taking any action to withdraw, transfer, sell, encumber, dissipate, or hypothecate that \$1,105,191,619, including the Deribit and Starkware Shares.

40. Additionally, as of June 23, 2022, Three Arrows owes \$14,597,708.67 in interest (referred to in the MLAs as "Loan Fees") on the outstanding loan amount. Three Arrows further owes \$14,637,702.39 in "Late Fees," as that term is defined in the MLAs, due to its default. Genesis respectfully requests that Three Arrows place the \$14,597,708.67 in unpaid Loan Fees and \$14,637,702.39 in unpaid Late Fees into escrow pending outcome of this arbitration. In the alternative, Genesis respectfully requests that Three Arrows be enjoined from taking any action to withdraw, transfer, sell, encumber, dissipate, or hypothecate that \$14,597,708.67 in Loan Fees or \$14,637,702.39 in Late Fees.

I swear under penalty of perjury that the above is true and correct to the best of my knowledge.

June 23, 2022


Arianna Pretto-Sakmann